

**INTERIM GENERAL CONDITIONS**  
**THE JUDICIARY, STATE OF HAWAII**  
**OCTOBER 1, 1998**

**A. Definition of Terms**

1. **Administrative Director.** The Administrative Director of the Courts, who is the chief administrative officer and Chief Procurement Officer of the Judiciary.
2. **Bid.** Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.
3. **Contract & Purchasing Branch.** The central office that handles the purchasing activities of the Judiciary.
4. **Contractor.** Any individual, firm, or corporation, entering into a contract with the Judiciary, as party or parties of the second part or his or their legal representatives.
5. **Fiscal & Support Services Director.** The Fiscal & Support Services Director of the Judiciary, who is in charge of the financial affairs of the Judiciary.
6. **Judiciary.** The Judiciary, State of Hawaii.
7. **Offer.** An offer means a bid or proposal as defined in Item A.2. and A.10., in response to any solicitation.
8. **Offeror.** Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in Item A.11.
9. **Officer-In-Charge.** The person(s) designated by the Judiciary to oversee that the goods or services provided by contractor are in accordance to the Specifications, Special Provisions, and General Conditions.
10. **Proposal.** A proposal means any offer submitted in response to any solicitation, except a bid as defined in Item A.2.
11. **Solicitation.** Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process or a request for proposals ("RFP"), used in the competitive sealed proposal process for the purpose of obtaining bids or proposals to perform a Judiciary contract.
12. **Specifications.** The directions, provisions, and requirements contained herein as may be necessary, pertaining to the method and manner of performing the work or to the quantities and qualities of materials to be furnished under the contract.
13. **Special Provisions.** Any special provisions or requirements attached hereto, which shall be considered a part of these general conditions. Should any special provisions conflict with these general conditions, said special provisions shall govern.

**B. Offer Requirements and Conditions**

- 1. Offer forms.** Proposals submitted in response to request for proposals (RFP) shall be in the format described by the RFP.

All bids submitted in response to an invitation for bids (IFB) must be prepared in ink or typed and shall be made on the offer form furnished by the Judiciary or an exact copy thereof in full accordance with the instructions given. A bid that contains any omission, erasure, alteration, addition not called for, conditional bid, or irregularity of any kind, may be rejected.

The bid price shall be "Delivered to Destination," where acceptance will be made by duly authorized personnel. Price shall also include all applicable taxes except the Federal Excise Tax from which the State is exempt. An exemption certificate, for use by the manufacturer in obtaining exemption from such tax, will be furnished to the Contractor on request.

Offers shall be signed, sealed, and submitted with the bid or proposal guaranty, if required, in the envelope plainly identifying the bid or proposal number, the item or items to which the offer relates, and the offeror's business address and telephone number. Offers will be received until the hour and date set in the solicitation and must be in the hands of the official indicated by that time, regardless of whether mailed or hand-carried.

All offers shall be subject to any addenda issued prior to the due date for submission of offers.

- 2. Offer Guaranty.**

Unless required by the special provisions, an offer guaranty is not required on any offer for goods or services.

When required by the special provisions, an acceptable offer guaranty shall be in an amount equal to at least five percent of the amount offered and shall be limited to: a bond in a form satisfactory to the Judiciary underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000, provided however, if the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as non-responsive, unless the failure to comply is determined by the chief procurement officer, the head of a purchasing agency, or the designee of such officer to be non-substantial pursuant to 3-122-223, Hawaii Administrative Rules.

3. **Tax Clearance.** A tax clearance certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service must be submitted with your sealed offer by the due date and time. The tax clearance certifies that the Contractor has filed all tax returns due and has paid all amounts owed, including penalty and interest. The tax clearance shall be obtained on the attached two-part "TAX CLEARANCE APPLICATION", Form A-6, that combines DOTAX and IRS Clearances. If you are unable to obtain a tax clearance in time to include with your sealed proposal, we will accept for the purpose of this solicitation a completed "CERTIFICATION FOR TAX CLEARANCE" form (attached) in place of Form A-6.
4. **Modification or Withdrawal of Offers.** Offers may be modified or withdrawn at any time prior to, but not after, the hour fixed in the IFB or RFP.
5. **Receipt and Opening of Bids.** For IFB's, all bidders are invited to attend the opening of bids. The Contract & Purchasing Branch shall open all bids at the time and place as stated in the IFB and in the presence of all bidders who attend. Bids may be inspected by those present provided only one bid is inspected at a time and except to the extent that the bidder designates trade secrets or other proprietary data to be confidential. Bidders shall ensure that material so designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. No bid leaves the bid opening room, no award decision shall be made and no discussion shall be allowed at a bid opening.
6. **Receipt and Registration of Proposals.** For RFP's, proposals and modifications shall NOT be opened publicly, but shall be opened in the presence of two or more procurement officials. A register of proposals shall be prepared and shall include: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered.

An offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Offerors shall ensure that such data so designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.
7. **Offer Rejection, Defects.** The Fiscal & Support Services Director may reject any offer, or waive any defects when such rejection or waiver will be in the best interest of the Judiciary.

C. **Acceptance of Offer and Execution of Contract**

1. **Acceptance of Offer.** Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not

only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The Judiciary shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the Fiscal & Support Services Director may negotiate with such offeror to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

The Fiscal & Support Services Director further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

2. **Preparation of Contract and Performance Bond.** The Contract & Purchasing Branch shall prepare two copies of the contract and, if required by the Special Provisions, a performance bond form for submittal to the selected offeror within 50 calendar days from opening of offers.
3. **Execution of Contract by the Selected Offeror.** The selected offeror shall execute the contract and performance bond (if required), obtain the necessary notarizations, and return all copies to the Contract & Purchasing Branch within ten calendar days following receipt.
4. **Return of Offer Guaranty.** All offer guaranties in the form of security deposits and surety bonds (if submitted as required) shall be returned immediately after execution of the contract. If a contract is not executed, the bid or proposal guaranties shall be returned after the Contract & Purchasing Branch decides to or publish another call for offers.
5. **Failure to Execute and Return Contract.** If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security (as required) within ten days after such award or within such further time as the Contract & Purchasing Branch may allow, the Contract & Purchasing Branch shall pay the amount of offeror's proposal guaranty into the State Treasury as a government realization of the State. The Fiscal & Support Services Director may then award the contract to the next lowest responsive and responsible offeror or may publish another call for offers, whichever method the Director may deem is in the best interest of the Judiciary.
6. **Non-Performance of Contract.** In the event the Contractor fails to perform the

work in accordance with each and every requirement of the general conditions and other provisions forming a part of the contract, the Administrative Director, in addition to any other recourse, reserves the right to suspend the Contractor from submitting offers on any or all of the Judiciary's purchases for such period of time as may be determined by the Administrative Director.

7. **Breach of Contract.** In the event of any breach of the terms of the contract by the Contractor, the Judiciary shall have, in addition to any other recourse, the right to terminate the contract without service of notice or to resort to legal process, without any legal liability on its part.
8. **Subcontracting and Assigning.** The Contractor shall not subcontract any of the work to be performed under his contract with the Judiciary, nor shall he assign the contract to any other person or firm without prior written permission from the Judiciary, and no subcontract or assignment made without such permission will be recognized. No subcontract or assignment shall, under any circumstances, relieve the Contractor of his obligation and liability under his contract with The Judiciary, and all persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.
9. **Publicity.** Contractor shall not refer to Judiciary, or any office, or officer thereof, or to the services provided pursuant to the contract, in any of Contractor's brochures, advertisements, or other publicity of Contractor. All media contacts to Contractor about the work or this Agreement shall be referred to the Judiciary.
10. **Availability of Funds.** An award shall be contingent upon the availability of funds, and any contract awarded shall be subject to cancellation by the Judiciary at any time, if funds are unavailable.

**D. Legal Relations and Responsibility**

1. **Statutory Requirements.** The applicable provisions of Chapter 103 and 103D, Hawaii Revised Statutes, as amended, shall be deemed to be a part of the contract as though fully set forth therein.
2. **Patented Article.** The Contractor shall be required to and hold the Judiciary and its duly authorized representatives harmless against all demands, claims, actions or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the Contractor and shall be deemed to be included within the proposal amount and contract price.
3. **Managed Process Review.** Any contract for goods, services, or construction entered into after July 20, 1998 and prior to July 1, 2001 with an expiration date beyond June 30, 2001 shall, during its term, be subject to a single review by the State, or county, where applicable, pursuant to the managed process in Part III, 6 of Act 230, Session Laws of Hawaii, 1998. Pursuant to the managed process review, the contract may be canceled, renegotiated, continued, or extended by the State, or county, where applicable. The contract shall continue to be exempt from civil service laws for the duration of the contract even if a managed process is not

implemented.

**E. Payment**

1. **Acceptance and Final Payment.** After Contractor has satisfactorily completed all work in the opinion of the Administrative Director of the Courts or his designee, the Contractor shall be remunerated upon submitting a properly executed invoice in triplicate to the Judiciary. The invoice shall indicate the contract number. Pursuant to 103-10, Hawaii Revised Statutes, Contractor shall be paid no later than thirty calendar days following receipt of the invoice or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent The Judiciary from complying with this, Contractor shall be entitled to interest on the principal amount remaining unpaid at a rate equal to the prime rate for each calendar quarter plus two per cent, but in no event shall exceed twelve (12) per cent a year, commencing on the thirtieth day following receipt of the invoice or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the warrant. As used in this sub, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter. For this reason, the Judiciary shall reject any bid submitted with a condition requiring payment within a shorter period. Further, the Judiciary will reject any bid submitted with a condition requiring interest payments greater than that allowed by 103-10, Hawaii Revised Statutes.

However, this shall not apply in those cases where delay in payment is due to a bona fide dispute between the Judiciary and the Contractor concerning the services or goods contracted for, a labor dispute, a power or mechanical failure, fire, acts of God, or any similar circumstances beyond the control of the Judiciary.

Where the time of payment is contingent upon the receipt of federal funds, or federal approval, interest payment shall be in accordance with Sec. 103-10, Hawaii Revised Statutes.

Final payment shall be made only after submission by the Contractor of a tax clearance certificate from the State Director of Taxation and Internal Revenue Service showing that all delinquent taxes levied or accruing under State statutes have been paid in accordance with 103-53, Hawaii Revised Statutes.

2. **Change Orders.** The Judiciary may at any time by a written change order, and without notice to the Surety and without invalidating the contract or performance bond, make changes within the general scope of the contract, including but not limited to drawings, designs, specifications, materials to be used, quantity, method of packing or shipment, and place of delivery. However, if any such change will cause an increase or decrease in the cost of, or time required for performance of the contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both; and the adjustment shall be agreed upon between the Judiciary and the Contractor before issuing the change order and undertaking the

changed work. If the equitable adjustment causes an increase in cost, the additional charge(s) shall be billed separately from the basic contract charge.